the ground of sub letting. The tenant had entered into a partnership with his sons and ultimately retired from partnership handing over premises and business to his sons. There was no proof that lease was taken for benefit of family. It was held that it would amount to unlawful sub-letting. Identical is the position herein. Therefore, the finding of fact arrived at by the learned Rent Controller and the Appellate Authority requires no disturbance. In the peculiar facts, since the landlord is a stranger to any arrangement between the tenant and the third person, adverse inference could easily be drawn. The alleged petitioner Parikshat Kumar was setting up his title in the sense that he is a member of the Hindu Undivided Family who was the tenant. It is incorrect. He is running his own business therein independently and there is thus no escape but to approve the finding of the learned Appellate Authority.

(19) For these reasons, the revision petition must fail and is accordingly dismissed. The petitioners are granted one month's time to vacate the demised premises.

R.N.R.

Before G.S. Singhvi & Iqbal Singh, JJ.

DAYA NAND DALAL,—*Petitioner.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 13952 of 1998

19th January, 1999

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume II—Rl. 5.32A (c)—Punjab Civil Services Rules, Volume I—Rl. 3.26 (d)—Compulsory retirement—Exercise of power—Principles re-stated—Petitioner not disclosing in petition orders of punishment imposed on him—Petitioner not entitled to any relief—Petitioner liable to be dismissed.

Held that (a) the employer is not required to comply with the principles of natural justice before an order of premature retirement of an employee is passed because such an order is not punitive and it does not cast any stigma on the employee. However, where the

order of retirment is passed as a measure of punishment, the employer has to make an inquiry in accordance with the rules and the principles of natural justice.

(b) The decision to retire an employee is to be taken by the government/appropriate authority on forming the opinion that it is in public interest to retire a government servant compulsorily.

(c) Though the satisfaction of the Government about the utility and fitness of the employee to be retained in service is subjective, the same has to be formed on an objective consideration of the relevant factors.

(d) The Government or the committee, who is entrusted with the task of making an evaluation of the record of the employee, must consider the entire record of service before taking a decision in the matter, but greater importance should be attached to the record of the employee and his performance during the later years. The record to be so considered would only include the entries in the confidential reports (bad as well as good) and the punishment, if any, imposed.

(e) If the Government servant is promoted to higher post after consideration of the adverse reports, if any, then such reports will lose their sting. This principle will apply with greater rigour where promotion is based purely on merit.

(f) Where the rule empowering the government/appropriate authority to prematurely retire a servant is silent, the government can issue administrative instructions laying down guidelines for exercise of power of premature retirement. Such guidelines are to be kept in view while considering the case of the employee for premature retirement/compulsory retirement but they cannot be read as controlling the discretion of the government/appropriate authority.

(g) If the record of the employee in relation to earlier years contains average and not so good entires but in the later years his performance shows positive improvement, then there must exist some cogent reasons for exercise of the power of pre-mature retirement.

(h) The Court will ordinarily not interfere with the *bona fide* exercise of power by making an evaluation of the service record of the employee as an appellate authority but where the exercise of

power by the Government or the appropriate authority is vitiated by violation of the statutory provisions governing the exercise of such power or where the appropriate authority fails to apply its mind to the record of the employee in an objective manner or where the appropriate authority forms opinion about the utility of the employee by relying on extraneous factors, then the Court not only has power but duty to exercise the power of judicial review to invalidate the order of retirement.

(Para 21)

Further held, that the recommendations made by the Screening Committee for petitioner's retirement from service and the order passed by respondent No. 2 do not suffer from any legal error warranting interference by the Court. It is not a case of no evidence or a case of non-application of mind or consideration of extraneous material. No doubt, the Annual Confidencial Reports do not certain many adverse entries but the various acts of financial irregularities committed by the petitioner, for which he has been punished by the competent authority, have been rightly taken into consideration by the Committee for forming an opinion that his further retention in service is not in public interest. The orders of punishment passed by the competent authority coupled with one "below average" entry constituted adequate material on the basis of which any person of ordinary prudence can form a *bona fide* opinion that the petitioner does not deserve to be continued in service. Therefore, we are unable to agree with Shri Hooda that impugned order is arbitrary or it is vitiated due to non-application of mind.

(Para 22)

Further held, that there is one more reason for not entertaining the petition, namely, the highly contumacious conduct exhibited by the petitioner while invoking extra-ordinary and equitable jurisdiction of the Court. He deliberately avoided reference to the various orders of punishment passed by the competent authority and tried to paint a rosy picture of his service record by stating that he has earned good reports throughout his service career and has earned very good and outstanding remarks in his Annual Confidential Reports of the recent past and but for the fact that the respondents have disclosed the darker side of the petitioner's service record, the Court would have been mislead to believe that the exercise of power vested in respondent No. 2 is vitiated by arbitrariness and *mala fide*. Learned counsel for the petitioner could

not explain as to why the petitioner did not make a mention in the writ petition about the orders of punishment. In the absence of any explanation on this count, we are constrained to observe that the petitioner has approached the Court with tainted hands and, therefore, he does not deserve any indulgence.

(Para 24)

Narinder Hooda, Advocate, *for the petitioner.*

Amol Rattan, Assistant Advocate General, Haryana, *for the Respondents.*

JUDGMENT

G. S. Singhvi, J.

(1) The petitioner has challenged his retirement from service under Rule 5.32 A(c) of the Punjab Civil Services Rules Volume II read with Rule 3.26 (d) of the Punjab Civil Services Rules Volume I Part I, as applicable to the employees of the State of Haryana.

(2) The facts necessary for deciding the legality and justification of order Annexure P-8 passed by the Principal Chief Conservator of Forests, Haryana are that the petitioner joined service as Deputy Range Officer. He was promoted as Range Officer on 14th June, 1972. His claim for promotion to the post of Divisional Forest Officer with effect from 25th April, 1990, the date on which his junior Shri Maya Ram was promoted has not been entertained by the respondents. By the impugned order he has been retired from service.

(3) The petitioner has challenged his retirement on the following two grounds :—

(i) The impugned action is vitiated by *mala fides* and ill-will; and

(ii) The decision taken by respondent No. 2 is *ex-facie* arbitrary and un-just.

(4) The respondents have justified the impugned order by stating that the competent authority has, after thorough evaluation of his service record come to the conclusion that the petitioner's retention in service is not in public interest.

(5) Shri Narender Hooda argued that the impugned order should be declared as vitiated due to *mala fide* because respondent No. 2 was annoyed with the petitioner on account of his making claim for promotion to the post of Divisional Forest Officer and also on account of his having filed C.W.P. No. 13850 of 1997 for quashing the order of transfer dated 4th September, 1997. Learned counsel submitted that respondent No. 2 could not digest the fact that the High Court has stayed the petitioner's transfer and, therefore, as soon as he got an opportunity, he mis-used the power vested in him and secured the petitioner's ouster from service. The second contention urged by Shri Hooda is that the petitioner's record does not contain any adverse material which could constitute basis for forming a *bona fide* opinion that his retention in service is not in public interest or that he had out lived his utility for public service and, therefore, the impugned decision should be declared arbitrary and be quashed.

(6) Shri Amol Rattan controverted the submission of Shri Hooda by arguing that the petitioner's retirement, which has been passed on the basis of an objective assessment of his service record by a Committee consisting of the Chief Secretary, the Financial Commissioner, the Administrative Secretary and the Head of Department, does not suffer from any illegality. He submitted that charge of *mala fide* levelled against the Principal Chief Conservator of Forest must be regarded as baseless because he has passed the impugned order on the basis of recommendations made by the high powered Committee.

(7) We have thoughtfully considered the respective contentions and have carefully gone through the record of the case. There is no dispute between the parties that the Annual Confidential Reports of the petitioner for the last 10 years contain the following entries:—

Year	*Grading*
1986-87	Average
1987-88	Good
1988-89	Below Average (Honesty average)
1989-90	Good
1990-91	Good

1991-92	Good
1992-93	Average
1993-94	Good
1994-95	Good
1995-96	Outstanding

(8) During this period of 10 years, the petitioner has been punished on various counts, the particulars of which are detailed below :—

(1) While working as Range Officer in Sonepat Division during 1982-83, the petitioner was charge-sheeted for mis-use of 50 cement bags. He did not reply to the charge-sheet. Shri Ajaib Singh Bajwa, who was appointed as Enquiry Officer held him guilty of mis-appropriating 45 cement bags. A copy of the enquiry report was sent to him along with letter dated 3rd May, 1988 but the petitioner did not reply. Finally, the penalty of stoppage of one increment with cumulative effect was imposed on the petitioner,—*vide* order No. 90/CFN, dated 15th September, 1988.

(2) While he worked as Range Officer, Karnal during 1977-78, shortage of material, store articles and wood was detected against him. He was found guilty in the regular departmental enquiry. By order dated 17th May, 1990, the Chief Conservator of Forests ordered recovery of Rs. 5,792 from the petitioner's pay.

(3) He was placed under suspension, *vide* order dated 29th June, 1990 for not handing over the charge of Panipat (P) Range and non-compliance of the orders of higher authority. His explanation was called by the Principal Chief Conservator of Forests but the petitioner did not reply. By an order dated 30th April, 1991, he was treated as absent from duty for the period from 29th June, 1990 to 2nd August, 1990.

(4) While working as Range Officer, Sonepat during 1982-83 he is said to have charged un-sanctioned vouchers amounting to Rs. 22,465. His explanation was called but the petitioner did not reply. Ultimately, the Conservator of Forests (North) passed order dated 9th March, 1992 for recovery of Rs. 22,465.10 from him (in respect of this

punishment the petitioner has averred in the replication that the charge levelled against him was not correct and, therefore, no recovery was effected from him).

(9) In the light of the above noted favourable and adverse factors available in the petitioner's record, it is to be decided whether the exercise of power by the competent authority under Rule 3.26 (d) of the Punjab Civil Services Rules, Volume I, Part I read with Rule 5.32A (c) of the Punjab Civil Services Rules, Volume II, is vitiated due to *mala fide,* arbitrariness or any patent illegality. However, before deciding that, it will be appropriate to analyse the relevant statutory provisions and the some of the judicial precedents on the subject.

(10) Rule 3.26 (a) and (d) of the Punjab Civil Service Rules, Volume I, as applicable in the State of Haryana, reads as under:–

"3.26 COMPULSORY RETIREMENT :

(a) Excpt as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing.

xx xx xx xx xx

(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice:—

(i) If he is in Class I or class II Service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty-five years; and

(ii) (a) If he is in class III Service or post ; or

(b) If he is in class I or class II Service or post and entered Government service after attaining the

age of thirty-five years, after he has attained the age of fifty-five years.

The Government employee would stand retired immediately on payment of three months pay and allowances in lieu of the notice period and will not be in service thereafter.

(e) A Government employee, other than a class IV Government employee, may by giving a notice of not less than three months in writing to the appointing authority, retire from service—

(i) If he is in class I or II service or post and had entered Government Service before attaining the age of thirty-five years after he has attained the age of fifty years; and

(ii) (a) if he is in class III service post ; or (b) if he is in class I or class II service or post and entered Government service after attaining the age of fifty-five years :

Provided that it shall be open to the appointing authority to withhold permission to a government employee under suspension who seeks to retire under this clause."

(11) The instructions issued by the government *vide* letter dated 16.8.1983, which is in the centre of controversy are also reproduced below:--

"I am directed to invite your attention to the Haryana Government letter No. 3586-4GSI-75, dated 30.6.1975 and letter No. 3575-4GSI-35/24237, dated 9.8.1975 and to state that in accordance with S.No. 10 of the proforma attached with letter dated 30.6.1975, it is necessary to intimate whether the 50% Confidential Reports of an officer are good.

2. Now the Government after considering this matter has taken a decision that the extension in service beyond the age of 55 years should be given to the officers/officials only in case they have earned 70% good or better than good reports during last 10 years of service. Accordingly, an amended proforma is enclosed herewith.

3. In the matter of giving extension to gazetted officers in

the service beyond the age of 50 years, it is necessary that they should have earned 50% good or better than good reports during the last 10 years as per the previous decision. Average report should be conveyed to the officer. In case a representation against such a reports is received within 6 months, the same should be decided.

Action in accordance with these instructions may kindly be taken in future and these instructions be got noted by all concerned."

(12) The nature of the power vested in the government and the competent authority to retire an employee before he attains the age of superannuation has become subject matter of decisions by the Superme Court and all other Courts. Some of the decisions on the subject are:-

(i) *Union of India* v. *J.N. Sinha and another,* (1)

(ii) *Union of India etc.* v. *M.E. Reddy and another,* (2)

(iii) *Brij Bihari Lal Aggrawal* v. *Hon'ble High Court of Madhya Pradesh and others,* (3)

(iv) *Baldev Raj Chadha* v. *Union of India and others,*(4)

(v) *H.C. Gargi* v. *State of Haryana,* (5)

(vi) *Brij Mohan Singh Chopra* v. *State of Punjab,* (6)

(vii) *Ram Ekbal Sharma* v. *State of Bihar and another,* (7)

(viii) *Shri Baikuntha Nath Das and another* v. *The Chief District Medical Officer, Baripada and another,* (8)

(ix) *Post and Telegraphs Board* v. *C.S.N. Murthy,* (9)

(x) *S. Ramachandra Raju* v. *State of Orissa,* (10)

(xi) *Narasingh Patnaik* v. *State of Orissa,* (11)

(1) A.I.R. 1971 S.C. 4
(2) 1979 (2) S.L.R. 192
(3) 1980 (3) S.L.R. 583
(4) 1980 (3) S.L.R. 1
(5) 1986 (3) S.L.R. 57
(6) 1987 (2) S.L.R. 54
(7) 1990 S.C. 1368
(8) 1992 (2) S.L.R. 2
(9) 1992 (2) S.L.R. 352
(10) 1995 (1) R.S.J. 18
(11) 1996 (2) S.L.R. 615

(xii) *Sukhdeo* v. *The Commissioner, Amravati Division, Amravati and another,* (12)

(xiii) *State of Haryana* v. *Suraj Mal Hooda,* (13)

(xiv) *K.K. Vaid* v. *State of Haryana,* (14)

(xv) *Daya Nand* v. *State of Haryana and another,*(15)

(xvi) *Ram Kishan* v. *State of Haryana,* (16)

(xvii) *Chander Bhan Arya* v. *Secretary to Government, Haryana and another (17), and*

(xviii) *Dharam Singh* v. *State of Haryana and another,* (18)

(13) The proposition of law laid down in J.N. Sinha's case (supra) reads thus:—

"The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rules, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. *If that authourity* bona fide *forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.*

....

Compulsory retirement involes no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one

(12) 1996 (4) S.L.R. 8
(13) 1991 (1) R.S.J. 450
(14) 1990 (1) S.L.R. 1
(15) 1995 (1) S.L.R. 57
(16) 1995 (3) S.L.R. 452
(17) 1997 (3) R.S.J. 626
(18) 1998 (1) R.S.J. 10

who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

(14) In *Union of India etc.* v. *M..E. Reddy and another* (supra), the proposition of law has been stated in the following words:--

"The compulsory retirement after the employee had put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311 (2) of the Constitution. The object of the rule to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. Further clarifying it was observed that there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue, they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years."

(15) Explaining the object of the rule of premature retirement, their Lordships observed:—

"It seems to us that the main object of this Rule is to instil a spirit of dedication and dynamism in the working of the

State Services so as to ensure purity and cleanliness in the Administration which is the parmount need of the hour as the Services are one of the pillars of our great democracy. Any element of constituent of the Service which is found to be lax or corrupt, inefficient or not up to the mark or has outlived his utility has to be weeded out."

(16) Commenting on the scope of the power of judicial review, their Lordships remarked:—

"The safety valve of public interest is the most powerful and the strongest safeguard against any abuse or colourable exercise of power under this Rule. *Moreover, when the Court is satisfied that the exercise of power under the Rule amounts to a colourable exercise of jurisdiction or is arbitrary* or mala fide *it can always be struck down.*"

(17) In *Shri Baikuntha Nath Das* v. *The Chief District Medical Officer, Baripada* (supra), their Lordships of the Supreme Court reviewed various decisions, most of which have been referred to hereinabove and then laid down the following principles:—

"(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice has no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide*, or (b) that it is based on no evidence, or (c) that it is "arbitrary" in the sense that no reasonable person would form the requisite opinion on the given material : in short, if it is found to be perverse order.

(iv) *The Government (or the Review Committee as the case may be) shall have to consider the entire record of service before taking a decision in the matter of*

course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If government servant is promoted to a higher post notwithstanding the adverse remaks, such remarks loss their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

(18) In *K.K. Vaid* v. *State of Haryana* (supra), a Division Bench of this Court struck down the instructions issued by the Government of Haryana,—*vide* letter dated 16.8.1983 on the ground that it amounts to an encroachment on the power of the competent authority to decide whether or not an employee should be retained in service. The ratio of that decision can be found in the following observations:—

"The simplicity of articulation of these instructions and the breadth of their scope is startling. As per these instructions the emphasis is on the positive merit of the employee to continue in service rather than on his desirability to be retained in service. The approach is wholly fallacious and apparently contrary to the test of dead wood as pointed out above. As has been pointed earlier, under Rule 3.26 (a) a government employee retires from service on the afternoon of the last day of the month in which he attains the age of 58 years, i.e., he has to normally continue in Government service up to that point of time. A reading of the impugned instructions as noted above clearly brings out that the Government authorities presuppose the retirement of a Government employee at the age of 55 years. That is why the instructions record "extension beyond the age of 55 years may be granted to the officials/officers with the condition that more than 70% of the last 10 confidential reports are good or above." This is totally against the letter and spirit of rule 3.26 (a). Therefore,

these instructions have to be held to be violative of clauses (a) and (d) of this rule."

(19) In para 10 of the judgment it was observed as under:—

"The word "average" means nothing more than medium or ordinary. There may well arise three situations while examining the service record of an employee for purpose of his premature retirement. He may be positively good or positively bad and may neither be good nor bad. It is only the last category which can be rated or evaluated as average. Though it is interesting to note in the light of these instructions that the Haryana Government expects all of its employees not only to be above average, but something more also, i.e., good or above, yet it appears difficult to hold that an average entry has to be taken as an adverse entry. It is only in the case of employees who are positively bad that the Government may be justified in retiring them at an early age in terms of clause (d) of rule 3.26 referred to above."

(20) The judgment in *K.K. Vaid's* case (supra) has been partially reversed by the Full Bench in *Daya Nand's* case (supra). Para 21 of the decision of the Full Bench which contains discussion on the subject is extracted below:—

"When the entire service record of an officer is considered, especially the record of the later years. the impact/ impression of all the entries therein is to be gathered and it is only from such record that the Appointing Authority is to decide whether it would be in the public interest to compulsorily retire a Government servant. Opinion expressed by the Courts with respect of attaching degree of weight to one or few entries of "average" recorded in the service record cannot be held to be a "Rule of Law" which could be followed as such in subsequent cases. The purpose of communicating adverse remarks is to give an opportunity to a Government Officer to improve in his conduct and functioning as such Officer. If the State Government decides as a policy that "average" reports which are communicated are to be treated as adverse and taken into consideration at the time of deciding the question of compulsory retirement of Government officers, no fault can be found with such instructions. Such remarks would be

treated as adverse though ordinarily, literally speaking they may not be extremely bad. When *K.K. Vaid's* case was decided Haryana Government instructions regarding communication of adverse remarks of "average" to the Government Officers were not in existence. Now when such a question is to be examined in the light of such instructions, the Rule of Law laid down in *K.K. Vaid's* case cannot be followed. Even otherwise the decision in *K.K. Vaid's* case, that instructions of the State Government to retain in service only Government Officers possessing more than 70% "good " reports is contrary to the spirit of Rule 3.26 cannot be held to be good law. Under Rule 3.26 (a) as reproduced above, the Government Servant is to retire on attaining the age of 58 years and beyond that he can be retained in service only in exceptional circumstances with the sanction of the competent authority in public interest . While interpreting Rule 3.26 (d) the public interest is to be seen in the context of allowing a person to continue in service beyond the age of 55 years and obviously not only average but persons with meritorious record are to be allowed extension and that would serve the public interest. Normally meritorious persons are not to be denied promotion in the garb of allowing extension to such officers who are good officers or meritorious officers. It is only an exception that for reasons to be recorded and in exceptional circumstances that extension in service is to be allowed. The phraseology used in Rule 3.26(d) is entirely different though the element of public interest is prominent therein also. An absolute right has been given to the Government if it is of the opinion, in the public interest, to retire an officer who completes the age of 55 years in Class I and II service or after completing service of 35 years of service to compulsory retire the Government servant. This opinion is subjective but formed on data, i.e., on appraisal of the entire service record especially service record of the later years. The use of the word "absolute right" is significant that no government servant can claim that he must be retained in service beyond the prescribed time as mentioned therein up to the age of 58 years only when the action of the State Government is considered arbitrary or *mala fide* that the same can be questioned in the Court of Law. Since the State has absolute right to retire any Government employee, it is taken that the State

Government can issue instructions on this subject which would be in the nature of guidelines for the Competent Authority to be kept in view while passing orders under this Rule. The instructions of the Government issued in 1983 that retention beyond 55 years be granted to officers having 70% or above good record in the last ten years do not infringe rule 3.26 (a) or (d). The approach of the Division Bench in K.K. Vaid's case that the instructions of 1983 aforesaid were against the letter and spirit of Rule 3.26(a) as mentioned in para 9 of the judgment, cannot be accepted as laying down good law. The concept of weeding out dead wood as embedded in Rule 3.26(a) or (dd), in inherent but that is not the only ground available therein to pass order. The same is to be read along with the other grounds as mentioned in J.N. Sinha's case and Baikuntha Nath's case i.e. the object of these Rules is also to maintain high standard of efficiency and initiative in the State Services. There should be spirit of dedication and dynamism in the working of State Services. Officers who are lax, corrupt, inefficient or not upto the mark and have outlived utility should be weeded out. Thus, the view expressed that Rule 3.26 will be attracted only to chop off dead wood is not correct. There may be varied reasons to be taken into consideration, that would constitute public interest that an order as required under Rule 3.26(d) can be passed as briefly noticed above."

(21) In *Ram Kishan* v. *State of Haryana* (supra) (decided by one of us), the Court outlined the scope of judicial review in such matters in the following words:—

"No hard and fast rule can be laid down and no strait-jacket formula can be prescribed for exercise of power of judicial review, by the court's in matters relating to compulsory retirement. In each case of compulsory retirement which is assailed before a Court of law. the court is required to examine as to whether the power of compulsory retirement has been exercised by a competent authority and as to whether the competent authority has objectively considered the material placed before it for forming an opinion that the employee concerned has out-lived his utility or that his retention in public service is not justified. If the court finds that the order has not been passed by a competent authority, there will be ample justification for interference

with the order of retirement on the ground of lack of authority. Likewise, where the court finds that the power of compulsory retirement has been exercised without consideration of relevant material or where it is found that the competent authority has relied on extraneous factors or has not applied its mind or has reached to a conclusion which no reasonable man would have arrived in similar circumstances, the court will be justified in upsetting the order of premature retirement. Exercise of power of compulsory retirement for extraneous considerations or by ignoring relevant factors can appropriately be construed as exercise of power which suffers from malice in law inviting interference by the Court. The court will, no doubt not act as an appellate authority and will not re-evaluate the material placed before the competent authority for the purpose of forming an opinion as to whether the employee should be kept in service or not but it will be the duty of the court to look into such record with a view to find out as to whether the competent authority has objectively applied its mind to the relevant considerations."

The propositions, which emerge from the above analysis of the Rules, the instructions and the various judicial precedents referred to hereinabove, are:—

(a) The employer is not required to comply with the principles of natural justice before an order of premature retirement of an employee is passed because such an order is not punitive and it does not cast any stigma on the employee. However, where the order of retirement is passed as a measure of punishment, the employer has to make an inquiry in accordance with the rules and the principles of natural justice.

(b) The decision to retire an employee is to be taken by the government/appropriate authority on forming the opinion that it is in public interest to retire a government servant compulsorily.

(c) Though the satisfaction of the government about the utility and fitness of the employee to be retained in service is subjective, the same has to be formed on an objective consideration of the relevant factors.

(d) The Government or the committee, who is entrusted with the task of making an evaluation of the record of the employee, must consider the entire record of service before taking a decision in the matter, but greater importance should be attached to the record of the employee and his performance during the later years. The record to be so considered would only include the entries in the confidential reports (bad as well as good) and the punishment, if any, imposed.

(e) If the government servant is promoted to higher post after consideration of the adverse reports, if any, then such reports will lose their sting. This principle will apply with greater rigour where promotion is based purely on merit.

(f) Where the rule empowering the government/ appropriate authority to prematurely retire a servant is silent the government can issue administrative instructions laying down guide-lines for exercise of power of premature retirement. Such guide-lines are to be kept in view while considering the case of the employee for premature retirement/compulsory retirement but they cannot be read as controlling the discretion of the government/appropriate authority.

(g) If the record of the employee in relation to earlier years contains average and not so good entries but in the later years his performance shows positive improvement, then there must exist some cogent reasons for exercise of the power of pre-mature retirement.

(h) The Court will ordinarily not interfere with the *bona fide* exercise of power by making an evaluation of the service record of the employee as an appellate authority but where the exercise of power by the government or the appropriate authority is vitiated by violation of the statutory provisions governing the exercise of such power or where the appropriate authority fails to apply its mind to the record of the employee in an objective manner or where the appropriate authority forms opinion about the utility of the employee by relying

on extraneous factors, then the Court not only has power but duty to exercise the power of judicial review to invalidate the order of retirement.

(22) If we examine the petitioner's case in the light of the above discussion, there is little difficulty in holding that the recommendations made by the Screening Committee for petitioner's retirement from service and the order passed by respondent No. 2 do not suffer from any legal error warranting interference by the Court. It is not a case of no evidence or a case of non-application of mind or consideration of extraneous material. No doubt, the Annual Confidential Reports do not contain many adverse entries but the various acts of financial irregularities committed by the petitioner, for which he has been punished by the competent authority, have been rightly taken into consideration by the Committee for forming an opinion that his further retention in service is not in public interest. The orders of punishment passed by the competent authority coupled with one "below average" entry constituted adequate material on the basis of which any person of ordinary prudence can from a *bona fide* opinion that the petitioner does not deserve to be continued in service. Therefore, we are unable to agree with Shri Hooda that impugned order is arbitrary or it is vitiated due to non-application of mind.

(23) The petitioner's attempt to link the stay of his transfer by the High Court and the impugned action does not merit our approval. The very fact that the impugned order has been passed by respondent No. 2 on the recommendations of Screening Committee is sufficient to negative the plea of *mala fide* exercise of power. That apart, as the Principal Chief Conservator of Forest has not impleaded as party respondent, no finding of malice-in-fact can be recorded against him.

(24) There is one more reason for not entertaining the petiton, namely, the highly contumacious conduct exhibited by the petitioner while invoking extra-ordinary and equitable jurisdiction of the Court. He deliberately avoided reference to the various orders of punishment passed by the competent authority and tried to paint a rosy picture of his service record by stating that he has earned good reports throughout his service career and has earned very good and outstanding remarks in his Annual Confidential Reports of the recent past and but for the fact that the respondents have disclosed the darker side of the petitioenr's service record, the Court would have been mislead to believe that the exercise of power vested in

respondent No. 2 is vitiated by arbitrariness and *mala fide*. Learned counsel for the petitioner could not explain as to why the petitioner did not make a mention in the writ petition about the orders of punishment. In the absence of any explanation on this count, we are constrained to observe that the petitioner has approached the Court with tainted hands and, therefore, he does not deserve any indulgence.

(25) In Civil Writ Petition No. 15448 of 1993 *Jai Bhagwan Jain* v. *Haryana State Electricity Board, Panchkula,* a Division Bench of this Court took note of the growing tendency among the litigants to pollute the pure fountain of justice and observed as under :—

> "Satya (truth) and Ahimsa (non-violance) are the two basic values of life, which have been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life. However, post-independence era and particularly the last two decades have witnessed the sharp decline in these two basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the truth. Proceedings in the Courts, which were at one time considered to be pious and the people considered it their duty to tell the truth in the Court, now stand vitiated by the attempts made by the parties to pollute the ends of justice."

(26) While dismissing the writ petition of Jai Bhagwan Jain, the Court held as under :—

> "It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it to the Court to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find out full facts of the case before filing the petition and the cannot be heard to say that he is not aware of the facts concerning him. The petitioners has to demonstrate his *bona fides* before seeking relief from the Court in exercise of its equitable jurisdiction. It is not for the petitioner to decide as to which of the facts are relevant and which are not relevant. The petitioner cannot become a Judge on the

question of relevancy of facts. Non-disclosure of all the facts in candid and straight forward manner will necessarily warrant dismissal of a petition."

The Division Bench further held :

"We, may further add that a petitioner will not be entitled to be heard on the merits of the case where he is found guilty of concealment of facts or of making misstatement before the Court only on the ground that no stay order has been passed by the Court. *It is to be remembered that the Court considers a petition with the assumption that the averments made in the petition are true and correct. In a given situation, the Court may finally decide a petition ex parte where the non-petitioner does not appear despite service of notice. If a party suppressed facts from the Court, such ex parte decision may be rendered on the basis of incorrect or incomplete facts. Therefore, it is no answere to the charge of suppression of facts* or *misstatement of facts before the Court to say that no interim relief has been given to the petitioner or that he has not derived any benefit.* In our opinion, the very issue of a notice on a petition is a benefit derived by the petitioner. If subsequently it is found that the petitioner has mislead the Court or persuaded it in issuing notice by concealment of true facts of the case there will be ample jurisdiction for dismissing the petition."

(27) In *Rex* v. *Kensington Commissioner* (19). Cozens Hardy M.R. commented on the conduct of a party in a *ex parte* application in the following words :—

"On an *ex parte* application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J. said:

"It has for many years the rule of the Court and one which it

(19) 1917 (1) K.B. 486

is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts, facts not law................. The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that it finds out that the facts have been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement."

(28) *In R.V. Churchwardens* (20) of All Wigan, Lord Haterlay observed :—

"Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it—matters connected with delay or possibly with the conduct of the parties."

(29) In *Reg.* v. *Gerland* (21), it was held :—

"Where a process is *ex debito* justitiae the Court would refuse to exercise its discretion in favour of the applicatnt where the application is found to be wanting in *bona fides.*"

(30) Their Lordships of the Supreme Court have time and again emphasised the necessity of the litigant approaching the Court with clean hands. In *Hari Narain* v. *Badri Das* (22), the Apex Court revoked, the special leave to appeal granted to the appellant solely on the ground that he made misstated facts before the Court. Some of the observations made in that decision are extracted below :—

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art. 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of facts and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading.

(20) (1976) I.A.C. 611
(21) (1870) 39 L.J. QB. 86
(22) A.I.R. 1963 S.C. 1558

Thus if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his applicationfor special leave are inaccurate and misleading, and the respondent is entitled to contend that the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellate ought to be revoked."

(31) In *Welcome Hotel and others* v. *State of Andhra Pradesh and others* (23) and in *S.P. Chenqalvarara Naidu (dead) by L.Rs.* v. *Jagannath (dead) by L.Rs. and others* (24), their Lordships held that one who comes to Court must come with clean hands and the Court will refuse to hear a party whose conduct is found to be unfair. In the latter case, there Lordships further held that where a preliminary decree was obtained by playing fraud on the Court inasmuch as a vital document was withheld in order to gain advantage on the other side, the party doing so deserves to be thrown out at any stage of the litigation.

(32) In *G. Narayanaswamy Reddy and another* v. *Government of Karnataka and another* (25), the Apex Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition, while rejecting the special leave petition, their Lordships of the Supreme Court observed :—

"Curiously enough, there is no reference in the Special Leave Petition to any of the stay orders and we come to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special leave petition are liable to be rejected. It is well settled in law that the relief under Art. 136 of the Constitution is discretionary and a petitioner

(23) A.I.R. 1983 S.C. 1015
(24) J.T. 1993 (6) S.C. 331
(25) A.I.R. 1991 S.C. 1726

who aproaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

(33) This Court has also taken a serious view to the contumacious conduct of a party and has declined relief in a large number of cases. In *Smt. Bhupinderpal Kaur* v. *The Financial Commissioner (Revenue) Punjab* (26), a learned Single Judge held that if the High Court comes to the conclusion that affidavit in support of the application for grant of a writ was not candid and did not fully state the facts, but either suppressed the material facts or stated them in such a way as to mislead the Court about the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits and where there is such a conduct which is calculated to deceive the Court into granting the order of rule nisi, the petition should on that short ground be dismissed.

(34) In *Chiranji Lal and others* v. *Financial Commissioner, Haryana and others* (27), a Bench approved the observations made in *Bhupinderpal Kaur's* case (supra) and held that where there has been a *mala fide* and calculated suppressions of material facts which, if disclosed, would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed, the writ petition should not be entertained.

(35) In *Harbhajan Kaur* v. *State of Punjab and others* (28), a Division Bench held as under :—

"The writ petitioners have tried to approach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Wakf Board since 1986 as is revealed from a perusal

(26) (1968) 70 P.L.R. 169
(27) (1978) 80 P.L.R. 582
(28) 1994 P.L.J. 287

of the order passed in Petition No. 363 of 1986 (*Sham Singh and another* v. *Punjab Wakf Board*). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal, the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner; that the Punjab Wakf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings Smt. Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land."

(36) In *Pawan Kumar* v. *State of Haryana and another* (29), another Division Bench held that a party who seeks relief from the High Court in the exercise of its equitable jurisdiction under Article 226 of the Constitution, must come with all *bona fides,* must make true, can did and full disclosure of all the relevant facts. Its conduct must be above board and there should be no attempt by a party to mislead the Court.

(37) By applying the ratio of the decisions referred hereinabove and keeping in view the fact that the petitioner intentionally withheld material facts from the Court, we declare that he is not entitled to any relief under Article 226 of the Constitution of India.

(38) For the reasons mentioned above, the writ petition is dismissed. The interim order passed on 8th September, 1998 is vacated forthwith. It shall be the duty of respondent No. 2 and officers working under him to relieve the petitioner by tomorrow. It is also made clear that the petitioner shall not be entitled to get any benefit of the service rendered by him under the interim order of the Court. However, the pay and allowances paid to him during that period shall not be recovered by the respondents.

R.N.R.

(29) 1994 (5) S.L.R. 73